

EXHIBIT D

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 INDYMAC BANK, F.S.B., ,

4 Plaintiff,

5 v.

.07 Civ.6865 (LTS)

6 NATIONAL SETTLEMENT AGENCY,
7 INC., STEVEN M. LEFF, RACHEL
8 M. LEFF, RICHARD A. LEFF, JOHN
9 DOES 1-100,

Defendants.

-----x
10 New York, N.Y.
11 August 16, 2007
12 3:10 p.m.

12 Before:

13 HON. KIMBA M. WOOD,

14 Chief Judge

15 APPEARANCES

16 ERIC WEINSTEIN,
17 DAVID GALALIS,
Attorneys for Plaintiff

18 MICHAEL SOSHNICK,
19 Attorney for Defendants Steven M. Leff and Richard A. Leff
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78gPindC1

1 (In open court; case called)

2 THE COURT: Counsel, please have a seat.

3 I will begin by asking Mr. Weinstein to give me an
4 update

5 MR. WEINSTEIN: Thank you, your Honor.

6 We are here today on the request for an order of
7 attachment and preliminary injunction against defendants
8 National Settlement Agency, Inc. and Steven Leff only.

9 And I thought the wrong guy showed up. Behind me, I
10 believe, is Mr. Soshnick who represents Richard Leff, but he
11 just informed me that he represents Steven Leff as well.

12 THE COURT: Now, National Settlement has defaulted so
13 far?

14 MR. WEINSTEIN: Well, they defaulted on this order to
15 show cause. Time to respond to the complaint has not expired.

16 THE COURT: I think you would have to put in papers on
17 the preliminary injunction and the attachment, unless I am
18 missing something, they need notice of that.

19 MR. WEINSTEIN: Your Honor, the criminal attorney who
20 was here last time --

21 THE COURT: Larry Krantz --

22 MR. SOSHNICK: -- your Honor, I have to say -- I have
23 to object to use of the words criminal defense attorney.

24 THE COURT: Yes, I understand. I note that Mr. Krantz
25 is not a criminal.

78gPindC1

1 MR. WEINSTEIN: Mr. Krantz accepted service on behalf
2 of Steven Leff of the summons and complaint.

3 If you recall, your Honor, the last time we were here
4 Mr. Krantz said he would make his client available to accept
5 the papers. It turns out his client did not make himself
6 available, but Mr. Krantz said he would accept service of the
7 papers on his client's behalf.

8 So I sent him a copy of the summons and complaint for
9 both Steven Leff and National Settlement Agency. Steven Leff
10 is the president of that company. We also have served National
11 Settlement Agency through the Secretary of State. Also service
12 was made previously to their office. Somebody was at the
13 office to accept the papers. However, that person claimed to
14 be an employee of another company, Guardian Bureau, Inc., which
15 is also owned by Steven Leff operating at the same office, but
16 is apparently a different company.

17 So we made a few attempts on service of National
18 Settlement Agency.

19 THE COURT: All right, the order to show cause that
20 you submitted, and that I signed on August 6, indicates that
21 opposition papers can be served on a schedule to be determined
22 at the August 7 hearing.

23 Can you remind me of whether National Settlement
24 Agency should be permitted time to respond to the request for a
25 preliminary injunction?

78gPindC1

1 MR. WEINSTEIN: Well, if I may, a second order to show
2 cause was signed by the Court on August 8, 2007. And I have
3 that with me, your Honor.

4 THE COURT: I have it here. It was just in the wrong
5 place.

6 MR. WEINSTEIN: That order to show cause was sent
7 along with the summons and complaint to Mr. Krantz's office on,
8 I believe it was the 8th.

9 THE COURT: All right.

10 MR. WEINSTEIN: I'd love to see their opposition
11 papers if they have any. I would be glad to accept them.

12 And if the Court were to entertain some sort of
13 temporary restraints, I would be inclined to extend the time
14 for National Settlement Agency to explain where the money is.
15 But I don't know if anybody is here to speak for them.

16 THE COURT: Mr. Soshnick, are you here to speak for
17 National Settlement?

18 MR. SOSHNICK: Your Honor, although my clientele base
19 has doubled with respect to this litigation to include Steven
20 Leff in addition to Richard Leff, I haven't been retained by
21 National Settlement Agency. So I am without authority to speak
22 on their behalf at all.

23 THE COURT: Well, they may appear to be in default of
24 my August 8 order, they have not appeared here.

25 What I am asking you, Mr. Weinstein, is, technically,

78gPindC1

1 what do you say underlies the grant of the preliminary
2 injunction rather than a default judgment?

3 MR. WEINSTEIN: At this point a default judgment, I
4 believe, is probably premature because the time has not run to
5 answer the complaint. That's at least 20 days from the day of
6 service.

7 So I think technically if they are in default of
8 anything at this point, they are in default of whatever
9 obligations they had to serve papers in opposition to this
10 motion. And to appear on this return date.

11 THE COURT: And what do you want me to do?

12 MR. WEINSTEIN: And, therefore, I would ask the Court
13 to enter the order of attachment and preliminary injunction
14 with respect to National Settlement Agency. And also to
15 consider the same application with respect to Steven Leff.
16 Although I imagine his attorney will have something to say
17 about that.

18 THE COURT: All right, now, bearing in mind the Second
19 Circuit's standard for granting what is essentially a
20 preliminary injunction, how do you meet each prong of it?

21 MR. WEINSTEIN: Okay, your Honor, Indymac, the
22 plaintiff, has submitted an affidavit through an officer, Nick
23 Nyland, N-Y-L-A-N-D, outlining the losses that Indymac
24 suffered, and the attempts to contact National Settlement
25 Agency for an explanation as to why escrow funds appear to have

78gPindC1

1 disappeared from the escrow funding account. These were
2 fiduciary funds wired into National Settlement Agency's escrow
3 funding account for the purpose of closing real estate
4 transactions.

5 And what happened was that several of the lien holders
6 in these transactions were not paid off. And Indymac is now in
7 a position of having to pay off those lien holders on their
8 own, in a sense double paying the amounts of each loan, because
9 the first set of monies that was wired into the NSA escrow
10 account disappeared.

11 THE COURT: I am looking at the Second Circuit's
12 standard. You cited in your papers a CPLR standard. I am not
13 sure what we are proceeding under, but I assume we have to find
14 irreparable harm.

15 MR. WEINSTEIN: Yes, your Honor, the Court has to
16 find, for purposes of the attachment, we look to Federal Rule
17 64, which then sends us to the CPLR, Article 62.

18 And for purpose of the attachment under Article 62, we
19 have to find a ground for attachment, as enumerated in that
20 article. In this case it is the dissipation of funds, which is
21 subsection 3 of CPLR 6201. A likelihood of success on its
22 claims against National Settlement Agency and Steven Leff in
23 this case. A claim that is in excess of any counterclaims that
24 may exist. And irreparable harm to the plaintiff.

25 And I believe that all of those are clearly and

78gPindC1

1 adequately set forth in the papers that were submitted, your
2 Honor.

3 THE COURT: All right, now, with respect to National
4 Settlement, there is no lawyer here to speak for them. And so
5 I rely solely on the papers before me, which were submitted by
6 Indymac.

7 From those papers it appears that National Settlement
8 Agency has dissipated funds. It also appears that Indymac is
9 likely to succeed on the merits of its lawsuit against National
10 Settlement Agency. That the amount due Indymac is in excess of
11 any counterclaim that might exist. And that there will be
12 irreparable harm to Indymac if an attachment is not issued
13 because of the dissipation of funds. I thus order the
14 attachment.

15 MR. WEINSTEIN: We have a proposed order, your Honor,
16 that we will submit.

17 THE COURT: Okay, good. Do you have it right now?

18 MR. WEINSTEIN: I do but it includes Steven Leff.

19 THE COURT: Well, we better get to Steven Leff, then
20 we will get to the order.

21 MR. WEINSTEIN: Thank you, your Honor.

22 THE COURT: Mr. Soshnick, would you like to speak
23 against the request for an attachment on your client's assets?

24 MR. SOSHNIK: May I first hear a basis from the
25 plaintiff as to attaching Steven Leff's assets?

78gPindC1

1 THE COURT: You may.

2 MR. WEINSTEIN: Steven Leff is the president of
3 National Settlement Agency. He had check-signing authority for
4 the company. Calls to him for an explanation of what occurred
5 have gone unanswered. And I would have imagined that he would
6 have shown up here today to testify at a hearing as to what
7 happened to those funds.

8 THE COURT: Now, you, I take it, you also would argue
9 that it appears that he has been responsible for a dissipation
10 of funds. I don't know whether you are including his own funds
11 or only National Settlement Agency?

12 MR. WEINSTEIN: Yes --

13 THE COURT: -- you are trying to attach his own funds?

14 MR. WEINSTEIN: Yes, I am, your Honor.

15 THE COURT: What are the grounds for attaching his
16 funds?

17 MR. WEINSTEIN: We received, I don't have a written
18 submission, we just received some materials from Chase
19 Manhattan Bank, the holder of the, or at least some bank
20 accounts for National Settlement Agency, as well as accounts in
21 the name of Steven and Rachel Leff. And for Rachel Leff by
22 herself.

23 And it appears there has been quite a bit of activity
24 in and out of those accounts.

25 In fact, your Honor, I digress for a moment, because,

78gPindC1

1 and I know this is not this Court's case, and we are burdening
2 the Court with a lot here, if your Honor recalls at the last
3 hearing we agreed, that is the plaintiff agreed, to forebear on
4 its application with respect to Rachel Leff and Richard Leff
5 pending the outcome of some expedited discovery. And Richard
6 Leff did appear for a deposition. And then we received the
7 materials, some materials from Chase Manhattan Bank.

8 And we have another application, not with respect to
9 Richard but only with respect to Rachel, showing large-scale
10 transfers of amounts -- of monies going to Rachel's personal
11 account from the escrow funding account. \$400,000 on May 24 of
12 2007 and another \$230,000 on June 22, 2007, which is right
13 around the time that the shenanigans at National Settlement
14 Agency appear to have been going on.

15 So we appear not only on this application for National
16 Settlement Agency and Steven Leff pursuant to the order to show
17 cause, but also to ask the Court to sign another order to show
18 cause with respect to Rachel Leff with respect to her funds as
19 well.

20 So I am not sure I completely answered the question.

21 THE COURT:: Well, let's take the Leffs one by one.

22 With respect to Rachel, I think what you are telling
23 me is you wish to file an order to show cause that would bring
24 her before the Court to answer to your allegations.

25 MR. WEINSTEIN: Yes, your Honor.

78gPindC1

1 THE COURT: And so you are not asking today for an
2 attachment.

3 MR. WEINSTEIN: Not ex parte against Rachel Leff,
4 correct.

5 THE COURT: Okay, now, let's move to Steven.

6 MR. WEINSTEIN: We were here last week and Mr.
7 Soshnick, while wearing the hat of Richard Leff's attorney, was
8 placing the blame on Steven Leff. And Richard Leff, in his
9 deposition, did the same thing. Said that his brother was a
10 control freak, was involved in every aspect of the company's
11 operations. And has not answered a request for information as
12 to where the funds went.

13 Rachel Leff is not a signer on the National Settlement
14 Agency escrow funding accounts, Steve Leff is.

15 THE COURT: Now, fitting your request with respect to
16 Steven Leff, within Article 62 of the CPLR, what do you have by
17 way of grounds for attachment?

18 MR. WEINSTEIN: There are actually separate grounds
19 for Rachel and Steven.

20 Rachel apparently is a nondomiciliary of the State of
21 New York, which will bring us under CPLR --

22 THE COURT: I assume you will deal with Rachel on
23 papers, and we need only deal with Steven.

24 MR. WEINSTEIN: Yes, to Article 6201 sub3, the
25 standard is, or the grounds are a likelihood of dissipating

78gPindC1

1 funds of Indymac.

2 And I guess the question is, if not Steven who ran the
3 company, then who? And if not Steven, then why is he not here
4 to say it is not me?

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7 (Continued on next page)

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78GMINDC2

1 MR. WEINSTEIN: If the funds were dissipated at a
2 National Settlement Agency escrow funding account and Steven
3 Leff had control over that account, then he should be held
4 responsible for there being dissipated unless he's got a
5 reasonable explanation for what happened.

6 MR. SOSHINICK: May I speak to counsel for a minute?

7 THE COURT: All right.

8 MR. SOSHINICK: Your Honor, I appreciate the
9 opportunity to speak to counsel for the plaintiff.

10 With respect to this matter, it's my understanding
11 that counsel for the plaintiff is seeking an attachment with
12 respect to Steven Leff. I don't believe that a sufficient
13 showing has been made at this hearing at this time to justify
14 that. All that we've heard is that funds at National
15 Settlement Agency were misappropriated in favor of Rachel Leff.
16 We did not hear that any of those funds were misappropriated in
17 favor of Steven Leff. And the last time we were here, same
18 counsel, same plaintiff represented that Rachel Leff was the
19 CEO of National Settlement Agency. So I don't believe that
20 when counsel comes here and says, funds from National
21 Settlement Agency were diverted to Rachel Leff that that
22 somehow should mean that not only there should be an attachment
23 with respect to Rachel Leff but there should be an attachment
24 with respect to Steven Leff.

25 THE COURT: Let's pause for a moment. Please pause.

78GMINDC2

1 The total amount Mr. Weinstein attributed to Rachel taking is
2 about \$630,000. I have papers from Indymac that substantiate
3 their claim that more than \$2 million has been misappropriated.

4 Is it true that Steven Leff was the only person with
5 signing power on National Settlement Agency's checking account?

6 MR. SOSHNIK: No, your Honor, no, that's not true.

7 MR. WEINSTEIN: There was an administrative assistant,
8 60-plus year-old woman named Arlene Oppenheimer who has been
9 subpoenaed, but I don't have any grounds to believe that the
10 administrative assistant is the person who was dissipating
11 funds and wiring them into the account of Steven Leff's wife.

12 Mr. Soshnick, do you wish to say anything further?

13 MR. SOSHNIK: Your Honor, my point is that at this
14 time there has been an insufficient showing by the plaintiff.
15 And the fact that Steven has not submitted to any informal
16 discussions with Indymac Bank or being deposed by them is not a
17 basis for an attachment. These proceedings were just recently
18 commenced and it's my understanding that the attorney who
19 previously appeared, because he was served, as the criminal
20 defense attorney for Steven Leff is not even in the United
21 States of America.

22 THE COURT: Who is it, Larry Krantz?

23 MR. SOSHNIK: Right.

24 THE COURT: So what?

25 MR. SOSHNIK: What I'm saying to you, your Honor,

78GMINDC2

1 this case was initiated against Mr. Leff by serving Mr. Krantz.
2 I was just retained this afternoon by Steven to represent him
3 in regard to these proceedings. And so far I have not heard
4 enough, as far as I'm concerned, for this Court to grant the
5 extraordinary remedy of an attachment of all of Steven Leff's
6 assets.

7 MR. WEINSTEIN: Your Honor, we have a bond in place.
8 If the Court deems it necessary, the bond could continually be
9 increased and Steven Leff could walk into this courtroom and
10 move to vacate that attachment order and preliminary
11 injunction, and we'll at that time get to the bottom of this.

12 But what he's doing is evading, A, service of the
13 papers when Mr. Krantz said he was going to produce Steven Leff
14 at his office at 11:30 a.m. the day after that conference we
15 had last week, and Steven Leff was not there. Larry Krantz was
16 good enough to accept the summons and complaint on Steven
17 Leff's behalf. Now we hear that Steven Leff, who himself may
18 very well be in this country, chose not to show up for the
19 hearing today and to send his lawyer instead. And I just don't
20 see -- the man should have to answer for what happened to at
21 least \$2.4 million that disappeared from the company that he
22 was controlling and operating and which he had check signing
23 authority for.

24 THE COURT: I order Mr. Steven Leff to appear in court
25 at 1 p.m. tomorrow in this courtroom to answer with any

78GMINDC2

1 opposition he has to the entry of an attachment and a
2 preliminary injunction. I note that Indymac appears to have
3 met the governing standard, but I'll give Steven Leff a chance
4 to be heard.

5 MR. SOSHNIK: Your Honor, could I just ask until
6 Monday because tomorrow I have a whole bunch of things going
7 on.

8 THE COURT: No, I can't do that.

9 MR. SOSHNIK: I know I can't be here tomorrow.

10 THE COURT: I understand.

11 MR. SOSHNIK: He has two small children, your Honor.
12 He's going through a divorce proceedings.

13 THE COURT: This is no reason for him not to show up
14 in court. Where are your other appearances and where?

15 MR. SOSHNIK: Your Honor, I have appearances in
16 Nassau County in the morning with respect to three matters, two
17 at the district court, one at the county court, and I also --

18 THE COURT: What do you have in the afternoon?

19 MR. SOSHNIK: In the afternoon, your Honor, I have a
20 conference with another attorney and with clients scheduled in
21 my office at 2:00. I wasn't expecting when he came here that I
22 would have to return tomorrow afternoon, but Monday I'm free
23 and Tuesday I'm free.

24 THE COURT: I am no longer in part I and I would be
25 foisting this on another judge who has no background on this,

78GMINDC2

1 which would not be fair. And, in any event, there is no reason
2 to delay this another day. I will set this for 1 p.m. and I
3 would assume that you can change your other commitment to
4 accommodate that if you wish to accompany Steven Leff here.
5 I'll see you tomorrow at 1 p.m.

6 MR. WEINSTEIN: One thing, your Honor. I believe the
7 TRO extends by its terms -- today is the tenth day that the
8 TRO --

9 THE COURT: In any event, you need to move to --

10 MR. WEINSTEIN: To extend it by one day, your Honor.

11 THE COURT: There is no reason not to extend it for
12 ten days.

13 MR. SOSHNIK: Your Honor, based upon what I know
14 about this matter, I don't believe that Mr. Leff is going to be
15 able to testify at a hearing tomorrow. If he were required to
16 be here, it's my belief that he would have to assert his Fifth
17 Amendment privilege against self-incrimination.

18 MR. WEINSTEIN: Your Honor, I believe we can draw an
19 adverse inference from that in this civil proceeding and would
20 ask that today the Court enter the attachment order. Of
21 course, Mr. Steven Leff at any time could bring a motion to
22 vacate it down the road, I would think, at any time. I don't
23 know the rules. But I see Indymac being prejudiced here and
24 Steven Leff suffering not a whole lot of prejudice if he can
25 walk back into this courtroom or into Judge Swain's courtroom.

78GMINDC2

1 THE COURT: In my view, Steven Leff's apparent
2 unwillingness to respond to the facts asserted by Indymac
3 suggest that he, as the controlling person at National
4 Settlement Agency, Inc., was responsible for dissipation of
5 funds of that entity. I find that from Indymac's papers filed
6 so far, Indymac is likely to succeed on the merits of its
7 claims against Steven Leff and the amount of its claims exceed
8 the amount of any counterclaim that might exist. I thus order
9 attachment of Steven Leff's funds, and I enjoin him from
10 dissipating any of the named defendants' assets or pay any debt
11 to any of the named defendants up to \$2,349,150 plus interest
12 costs, et cetera, but excluding the ordinary usual living and
13 business expenses of the defendant.

14 Now, I'm ready to sign an order to that effect. I
15 have one order that was previously given to me. Do you have a
16 different order?

17 MR. WEINSTEIN: This is the order. I'm passing up the
18 order.

19 THE COURT: Has Mr. Soshnick seen it? He needs to see
20 it before I can look at it.

21 MR. SOSHNICK: Your Honor, I have one question before
22 I see the proposed order. In connection with authorizing
23 Steven Leff to use funds in the ordinary course of business,
24 would you include in the ordinary course of business the
25 payment of reasonable attorneys fees?

78GMINDC2

1 THE COURT: I would not include them at this time, but
2 you may apply to Judge Swain for that relief next week.

3 MR. SOSHNICK: With respect to attorneys fees that he
4 has already paid, is that something that you would want the
5 attorneys to disgorge or would that not be something --

6 THE COURT: Judge Swain can decide that. I understand
7 you were retained just today by Steven.

8 MR. SOSHNICK: That's correct.

9 THE COURT: Has he already paid you attorneys fees?

10 MR. SOSHNICK: Yes.

11 THE COURT: How remarkable.

12 MR. SOSHNICK: Prior to today's proceedings.

13 THE COURT: Before today?

14 MR. SOSHNICK: I received a check today and I
15 previously received a check prior to today.

16 THE COURT: I'll leave it to Judge Swain to decide
17 that matter.

18 MR. SOSHNICK: I know that Mr. Krantz also received a
19 check obviously prior to today.

20 THE COURT: Same ruling. Judge Swain will decide
21 that.

22 MR. SOSHNICK: So in connection with any other fees
23 that may be required to be paid.

24 THE COURT: They should not be paid until you have an
25 order permitting that from Judge Swain.

78GMINDC2

1 MR. SOSHNIK: So you're not --

2 THE COURT: She will be here Monday.

3 MR. SOSHNIK: You're not denying the application that
4 I'm making; you're simply saying, make it to Judge Swain?

5 THE COURT: I'm denying it without prejudice to your
6 making it before Judge Swain. I think she'll need more facts
7 than I now have in order to decide this.

8 MR. SOSHNIK: You're certainly not ordering any legal
9 fees that were previously paid to be disgorged by either
10 Mr. Krantz or myself, is that correct?

11 THE COURT: Not so long as you're each good for the
12 amount of money you were given and I'll assume you are.

13 MR. SOSHNIK: Thank you very much, your Honor.

14 THE COURT: Now I need the order.

15 MR. SOSHNIK: I've just been handed a copy.

16 THE COURT: Page 2 of the order, paragraph 2. Filling
17 in the first blank is having appeared by Mr. Soshnick.

18 MR. WEINSTEIN: We didn't know if anybody was going to
19 appear today, your Honor.

20 THE COURT: Mr. Soshnick, you've seen the draft order.
21 Do you have any problem that you have not already discussed
22 with respect to this order?

23 MR. SOSHNIK: Your Honor, on page 3, there is a
24 paragraph that says: Ordered that pursuant to Federal Rule of
25 Civil procedure 64 and Civil Practice Law and Rules Section

78GMINDC2

1 6220, on or before August 20, 2007, Steven M. Leff and National
2 Settlement Agency, Incorporated shall provide counsel for
3 plaintiff a sworn affidavit enumerating in detail each and
4 every bank account, investment account, investment, commercial
5 paper, parcel of real property, motor vehicle, water craft or
6 other personal property of \$10,000 of value or more, whether
7 they are held personally or in trust and the location and
8 garnishee of each. I do object to that paragraph, your Honor.

9 THE COURT: Your ground?

10 MR. SOSHNIK: As I indicated earlier, based upon what
11 I know about this case, I don't believe that Steven Leff will
12 testify under oath or make a sworn affidavit, as this requires,
13 and that he would be asserting his Fifth Amendment privilege
14 against self-incrimination.

15 THE COURT: I will let that abide the event. The date
16 set is August 20. You have time to at that point see Judge
17 Swain.

18 MR. SOSHNIK: I just don't want him to possibly face
19 contempt proceedings by not submitting the sworn affidavit that
20 you're ordering and, therefore, I want it to be clear that I
21 don't anticipate that any sworn affidavit will be forthcoming
22 because I anticipate that he will be asserting his Fifth
23 Amendment privilege against self-incrimination.

24 THE COURT: I'm leaving to Judge Swain the question
25 whether any of the information requested is subject to a Fifth

78GMINDC2

1 Amendment assertion and right. It may well be, but I'm leaving
2 that up to her.

3 I have signed the order of attachment with respect to
4 Steven Leff and National Settlement Agency, Inc.

5 MR. WEINSTEIN: Your Honor, I have a reasonably thin
6 set of papers with reasonably telling evidence regarding Rachel
7 Leff. I'm handing it up to the Court.

8 THE COURT: I take it I don't need to read it until --
9 you want me to sign an order to show cause?

10 MR. WEINSTEIN: Yes, your Honor.

11 THE COURT: I have signed the order to show cause with
12 respect to Rachel Leff. Rachel Leff will need to appear before
13 Judge Swain A, room 17C, August 21 at 11 a.m., which is when
14 she hears motions. I've set a date for her papers to be in by
15 August 20, 2007, at 5 p.m., and any reply by plaintiff is due
16 two hours before the return date and time.

17 Is there anything further?

18 MR. WEINSTEIN: A matter of housekeeping, your Honor.
19 The original order, the order of attachment and order to show
20 cause, I should probably leave that with the Court. I don't
21 know if I should be E-filing those or should the Court.

22 THE COURT: My deputy can tell you that.

23 THE DEPUTY CLERK: We will take the order.

24 THE COURT: I find, pursuant to Rule 65 of the Federal
25 Rules of Civil Procedure, that the temporary restraining order

78GMINDC2

D 1 I have already entered should be extended for another ten days
2 for good cause shown in Indy's papers that the funds have been
3 dissipated and that the defendants have responsibility for that
4 dissipation, and that leads to a finding that plaintiffs are
5 likely to succeed in this case and that they will suffer
6 irreparable harm absent a TRO.

7 MR. SOSHNICK: If I may, your Honor, when you said
8 defendants you're not including Richard Leff.

9 MR. WEINSTEIN: He's right. The plaintiff Indymac has
10 agreed to forbear seeking injunctive relief at this time
11 against Richard Leff.

12 THE COURT: Then the TRO that I'm extending does not
13 apply to Richard Leff.

14 MR. WEINSTEIN: While I like to have the extra
15 protection, I think the combination of the attachment order,
16 which contains a preliminary injunction, and this new order to
17 show cause with respect to Rachel probably covers everything
18 that was really needed in that TRO. So I think given that the
19 order of attachment has been signed with the preliminary
20 injunction and this new order to show cause against Rachel, the
21 TRO could probably expire. I hate to give up some relief that
22 the Court just granted me.

23 THE COURT: What is the bottom line?

24 MR. WEINSTEIN: I think the TRO is duplicative at this
25 point, your Honor, because we now have an order of attachment

78GMINDC2

1 with preliminary injunction with National Settlement Agency and
2 Steven Leff, and we also have an order to show cause with
3 temporary restraints against Rachel Leff.

4 MR. SOSHNICK: On behalf of Richard Leff I want to
5 underscore that there is a substantial likelihood that the
6 plaintiff will not succeed on the merits as to Richard Leff
7 because he is totally blameless. He did not have check writing
8 authority with respect to National Settlement Agency accounts.
9 He did not misappropriate any funds, he did not benefit from
10 the misappropriation of any funds --

11 THE COURT: Are you representing both Steven and
12 Richard Leff?

13 MR. SOSHNICK: Yes, I am, your Honor.

14 THE COURT: Are you in a position to represent to me
15 that they do not have a conflict of interest such that they
16 should have separate counsel?

17 MR. SOSHNICK: Your Honor, I've spoken with both
18 Richard and Steven about that issue and each one understands
19 the very different positions of the other. They both know me
20 for over 20 years, and we have discussed the potential for a
21 conflict, and they have both indicated to me that they waive
22 any potential conflict with respect to me representing both of
23 them.

24 THE COURT: I will leave it to Judge Swain to have a
25 Curcio hearing if she wishes. That would mean that Steven Leff

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1 would have to come to court along with Richard Leff at a Curcio
2 hearing.

3 MR. SOSHNIK: If that's ordered by the Court.

4 THE COURT: By Judge Swain, if it's ordered.

5 MR. WEINSTEIN: For now, your Honor, there is no
6 application against Richard Leff, though.

7 THE COURT: Is there anything further you need?

8 MR. WEINSTEIN: No, thank you, your Honor.

9 THE COURT: The TRO is not extended because it's been
10 replaced by similar relief. Thank you, counsel.

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